

FORM 35-II: Order Prohibiting Involvement in NRC-Licensed Activities (Non-Immediately Effective) (Individual employed by Materials Licensee)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) IA-YY-XXX
(Individual's name))
)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

[Double space from here to end, except single space title of signing official.]

[Set forth the name of the person to whom the order is to be issued, and his or her relationship to the licensee -- for example:

(Individual's name) is employed as a _____ at _____ Hospital (Licensee) in _____. _____ Hospital holds License No. _____ issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part ____ on (date). The license authorizes _____ in accordance with the conditions specified therein. (Individual's name) is listed on the license as ____.]

II

[This section should provide a description of relevant events, facts, violations, technical or legal reasons that provide the substantive basis for issuing the Order. The following is provided as a sample discussion for this section.]

[On (date), an inspection (investigation) of licensed activities was conducted at licensee's facility at _____ in response to allegations received in NRC Region _____ on (date) that (Individual's name) had _____. During the inspection (investigation), Mr. A, the Licensee's (title), informed the inspectors (investigators) that _____. Mr. B, the Licensee's (title), stated _____. (Individual's name) denied _____. Contrary to the statements of (Individual's name), it was determined that (Individual's name) had _____.]

III

[This section should provide the justification for issuing the Order, in light of the facts described in Section II, e.g., "Based on the above, it appears that (Individual's name), an employee of the Licensee, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR ____ and 30.10. It further appears that (Individual's name) has deliberately provided to NRC inspectors (investigators) information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10." This section should also describe how the action of the named individual adversely affects public health and safety, e.g., "NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and

maintain records that are compete and accurate in all material respects. (Individual's name) 's action in causing the Licensee to violate 10 CFR __ and 30.10 and his misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if (name) were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that (name) be prohibited from any involvement in NRC-licensed activities for a period of (time) years from the date of this Order. Additionally, (name) is required to notify the NRC of (his/her) first employment in NRC-licensed activities for a period of (time) years following the prohibition period.

IV

¹Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. (Individual's name) is prohibited for (time) years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. If (name) is currently involved with another licensee in NRC-licensed activities, (he/she) must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.
3. For a period of (time) years after the (time) year period of prohibition has expired, (name) shall, within 20 days of acceptance of (his/her) first employment offer involving NRC-licensed activities or (his/her) becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where (he/she) is, or will be, involved in the NRC-licensed activities. In the notification, (name) shall include a statement of (his/her) commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that (he/she) will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by (Individual's name) of good cause.

¹Include "104b" if any of the licenses subject to the order were issued under 104b.

In accordance with 10 CFR 2.202, (Individual's name) must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which (Individual's name) or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region __, (regional address), and to (Individual's name) if the answer or hearing request is by a person other than (Individual's name). Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.714(d).²

If a hearing is requested by (Individual's name) or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION

Deputy Executive Director
for _____

²The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

Dated this ____ day of (Month) 20(XX)